

SERVICE DATE – LATE RELEASE MARCH 21, 2016

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 6 (Sub-No. 486X)

BNSF RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN FULTON COUNTY, ILL.

Decided: March 21, 2016

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 14.5 miles of rail line between milepost 52.2 in Farmington and milepost 66.7 in Dunfermline, in Fulton County, Ill. Notice of the exemption was served and published in the Federal Register on January 24, 2013 (78 Fed. Reg. 5,244). The exemption became effective on May 27, 2013.¹

Notice of Interim Trail Use

By decision and notice of interim trail use or abandonment (NITU) served on May 24, 2013, the proceeding was reopened and a 180-day period was authorized, permitting the Canton Park District of Canton, Ill. (Canton Park), to negotiate with BNSF for interim trail use and imposing a public use condition.

By a series of decisions, the NITU negotiation period was extended until November 22, 2015. On November 19, 2015, Canton Park filed a request to extend the NITU negotiating period until May 22, 2016, and to reduce the portion of the line subject to the NITU to be between milepost 52.2 and milepost 64.65, rather than the original endpoint of milepost 66.7. Canton Park states that they have been negotiating with BNSF, but that additional time is needed to continue and complete negotiations. On November 19, 2015, BNSF replied to Canton Park's request for an extension of the NITU negotiating period and for the issuance of a revised NITU. BNSF states that it does not object to either request.

Where, as here, the carrier has not consummated the abandonment and is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period

¹ The exemption was originally scheduled to become effective on February 23, 2013, however the effective date was stayed when a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed. However, no OFA was filed by the deadline, and the OFA process was terminated. BNSF Ry.—Aban. Exemption—in Fulton Cty., Ill., AB 6 (Sub-No. 486X) (STB served May 24, 2013).

may be extended.² Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU extension request will be extended only for rail line located between milepost 52.2 and milepost 64.65, for an additional 180 days, from November 22, 2015, to May 20, 2016. The NITU for the segment between milepost 64.65 and milepost 66.7 will be vacated. See 49 C.F.R. § 1152.29(d)(2).

Historic Preservation Condition

In a Board decision served on March 4, 2013, one historic preservation condition was imposed on BNSF's abandonment. BNSF Ry. Co.—Aban. Exemption—in Fulton Cty., Ill., AB 6 (Sub-No. 486X) (STB served Mar. 4, 2013). The condition required BNSF to: (a) retain its interest in, and take no steps to alter, the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way that are eligible for listing or are listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA),³ has been completed; (b) report back to the Board's Office of Environmental Analysis (OEA) regarding any consultations with the Illinois State Historic Preservation Office (SHPO) and the public; and (c) not file a consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed the condition.

On January 19, 2016, BNSF filed a letter stating that it exercised its abandonment authority and converted the portion of rail line between milepost 64.65 and milepost 66.7 to industry track.⁴ Because the Section 106 historic preservation condition was imposed on the entire line, BNSF's abandonment consummation notice on this portion was filed prematurely.

In a supplemental final environmental assessment dated February 18, 2016, OEA states that it contacted the SHPO regarding the historic properties on the line. OEA states that the bridge at milepost 52.86 is the major concern on the line and that the proposed abandonment

² See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

³ The NHPA was recodified in December 2014 to Title 54 and is now at 54 U.S.C. § 306108.

⁴ BNSF notes that if the Board does not grant Canton Park's request for a revised NITU, BNSF requests a one year extension of the consummation deadline for the rail line located between milepost 52.2 and milepost 64.65. Because we are granting the extension of the NITU, that request is moot.

between milepost 64.65 and milepost 66.7 (the portion BNSF prematurely consummated) would have no adverse effect on National Register eligible resources. In a letter dated February 9, 2016, the SHPO concurred with this finding. Accordingly, OEA recommends that the Section 106 condition imposed in the March 4, 2013 decision be modified to remove the segment between milepost 64.65 and milepost 66.7. Therefore, this proceeding will be reopened and the previously imposed condition will be modified to exclude, and therefore permit abandonment of, the segment of rail line between milepost 64.65 and milepost 66.7.

While BNSF improperly filed its notice of consummation before the historic preservation condition was removed, the Board will consider BNSF's consummation effective as of the date of this decision.

This action will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on May 24, 2013, is modified, and the NITU for the segment of rail line between milepost 64.65 and milepost 66.7 is vacated.
3. Canton Park's request for a further extension of the NITU is granted for 180 days, until May 20, 2016, but only for the portion of the rail line located between milepost 52.2 and milepost 64.65.
4. The Section 106 historic preservation condition imposed in the March 4, 2013 decision is modified as discussed above.
5. BNSF's consummation of abandonment on the segment of rail line between milepost 64.65 and milepost 66.7 is effective on March 21, 2016.
6. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.